IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 24043 of 2003

DATED: 31.1.2007

Between:
Adapa Narayana Prasad petitioner

And

A.P. Power Transmission Corporation Ltd
Rep by its Chairman & Managing Director,
Vidyut Soudha, Hyderabad & ors Respondents

THE HON'BLE SRI JUSTICE N.V.RAMANA

WRIT PETITION NO. 24043 OF 2003

ORAL ORDER:

The present writ petition is filed questioning the action of the respondents in not considering the case of the petitioner for regular appointment to the post of Sub Engineer taking into consideration the Diploma qualification acquired subsequent to the interview as illegal and arbitrary.

The petitioner claims that he has worked as contract labour from 2.2.1995 to 7.5.1998 in 33/11 KV sub station and entitled to absorption to the post of Junior Lineman in terms of B.P. Ms. No. 36 dated 18.5.1997. He was subjected to interview on 27.3.1998 and 28.3.1998 however, could not be appointed since 50% of the vacancies earmarked were filled up. Subsequently, petitioner acquired the Diploma qualification and claims that he is entitled to absorption in the respondent corporation as Sub Engineer. The petitioner contends that he was discriminated and similarly situated persons having acquired the Diploma qualification subsequent to the date of interview were appointed as Sub Engineers viz., Mr.G.V.V.Satyanarayana, Mr.R.V.V. Prasad in terms of the orders of this Court in W.P. Nos. 12463 of 2002. Hence, the present writ petition.

The learned counsel for the petitioner submitted that since the petitioner acquired the required qualification, he is entitled for appointment to the post of Sub Engineer in the respondent corporation

and the action of the respondents in not considering his candidature for appointment to the post of Sub Engineer is illegal and arbitrary.

The learned Standing Counsel for the respondents submitted that in B.P.Ms.No.36, dated 18.05.1997 it had specifically mentioned that the educational qualifications required for various posts for absorption/selection of contract labourers shall be as prescribed in the Board's Service Regulations, which were in force on the date of their initial engagement, and no relaxation of educational qualifications or other technical qualifications shall be given.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

To consider whether the petitioner is entitled for relaxation of educational qualification, it is appropriate to refer to Condition No.5 (b) of B.P. Ms. 36, dated 18.05.1997, which prescribes the educational qualifications. The said Condition No. 5(b) reads:

> **Educational Qualifications**: Educational Qualifications shall be as per Board's Service Regulations in force at the time of their first engagement. There shall be no relaxation of educational qualifications or other relevant technical qualifications which are prescribed in the Service Regulations for such appointment.

From a reading of the above, it is clear that the candidates should possess the educational qualifications as prescribed in the Board's Service Regulations, which were in force at the time of their initial engagement, and no relaxation of educational or other relevant technical qualifications, prescribed in the Board's Service Regulations, shall be given.

Since it is the admitted case of the petitioner that he has acquired the diploma qualification subsequently, having regard to Condition No.5(b) of B.P. Ms. No.36, dated 18.05.1997, which states

that no relaxation in educational or other relevant technical qualifications can be given, no exception can be taken to the action of the respondents in not considering the case of the petitioner for absorption/selection for the post of Assistant Engineer.

In this context it would be appropriate to refer to the judgment of the apex Court in Civil Appeal No.3215 of 2002 and batch, dated 18.04.2002, wherein the apex Court having considered the question of grant of relaxation of prescribed qualifications, answered the same in the negative, holding as follows:

> "In our view, in the petitions before the High Court there was no question of considering public policy and the discussion on the law was totally besides the point involved in the matter. Limited issue was – whether before regularization of service of employees, the Board was bound to follow the eligibility conditions laid down in its proceedings dated 18.05.1997 and 31.12.1997. Benefit of regularization which was conferred on the employees solely depended upon eligibility of conditions including the age limit prescribed under the statutory regulations. The statutory regulations provide that there shall be no relaxation of age. In cases, where the Board has committed mistake in engaging under-age casual employees or has permitted the contractor to do so would not confer any right on such employees for being regularized on the basis of BPMS dated 18.05.1997.
>
> In this view of the matter, the judgment rendered by the High Court cannot be sustained and is, therefore, set aside.
>
> However, considering the fact that the respondents/casual employees/employees of the contractor/junior linemen are in service for more than 15 years, we do not think that this would be a fit case for disturbing their appointments made in pursuance of the order passed by the High Court.
>
> Ordered accordingly. Appeals stand disposed of."

When the Board Service Regulations prescribes a particular qualification, the candidates seeking absorption/selection should possess such qualification, and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot relax the

prescribed qualifications, if done it would amount to rewriting the service conditions.

There are no merits in the writ petition. Accordingly the same is dismissed. No costs.

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N.V.RAMANA, J.

DATE: 31.1.2007
tvk

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